

K. Riback



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Beckman Instruments, Inc.

File: B-236709

Date: September 18, 1989

DIGEST

The General Accounting Office (GAO) will not consider the merits of an untimely protest under the significant issue exception to GAO's timeliness requirements where the issue raised--whether a bidder properly was permitted to correct its bid after bid opening--is not a matter of first impression or of widespread interest to the procurement community.

DECISION

Beckman Instruments, Inc. (Beckman), protests the award of a contract to Trittech Field Engineering, Inc. (Trittech), under invitation for bids (IFB) No. MDA905-89-B-0001, issued by the Uniformed Services University of the Health Sciences (UHS). This procurement is for repair and preventive maintenance of laboratory equipment. Beckman contends that despite its acknowledged untimeliness, its protest raises significant issues of alleged improprieties concerning the procurement. Specifically, Beckman contends that it was improper of the UHS to allow Trittech to correct mistakes in its bid that had an overall effect of decreasing its bid by 12 cents on a procurement valued at over \$47,000. Beckman contends that to permit a bidder to change or correct its prices after bid opening conflicts with the late bids and false statements clauses in the IFB.

We dismiss the protest.

The IFB was issued on February 22, 1989, and, as amended, set March 27 as the date for bid opening. From documents submitted by the protester it appears that after bid opening Trittech was permitted to correct minor errors in its extended unit prices which had the overall effect of reducing its total bid price of \$47,409 by 12 cents. There is no indication in the protest that the corrections had any effect on the relative standing of the bidders. The contract was awarded to Trittech on March 31, and performance

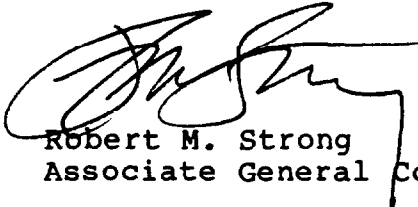
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of the service contract began on April 1. On August 1, 1989, Beckman protested the award of the contract to the agency. On August 18, 1989, the protest was denied because it was untimely and without merit. In her letter denying the protest, the contracting officer noted that 4 months of the contract period already had been performed and that it had been "almost two months" since Beckman had been provided under the Freedom of Information Act with the information on which its protest was based.

On August 25, Beckman protested the award of the contract to our Office. Where, as here, a protest initially has been filed with the contracting agency, it will not be considered by our Office unless the agency-level protest is timely filed in accordance with our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(3) (1989); Boonton Elecs. Corp., B-233436, Jan. 27, 1989, 89-1 CPD ¶ 93. Our Regulations require that protests based on other than solicitation improprieties be filed not later than 10 days after the basis of protest is known, or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). In this case, Beckman does not dispute the contracting officer's statement that Beckman had been provided with the information on which its protest was based "almost two months" before its agency-level protest was filed. The protest is therefore clearly untimely.

Beckman argues that we should consider its protest under section 21.2(b) of our Bid Protest Regulations, which contains an exception to our general timeliness rules for issues that are significant to the procurement community.

In order to prevent the timeliness requirements from becoming meaningless, we strictly construe and seldom use the significant issue exception, limiting it to protests that raise issues of widespread interest to the procurement community and which have not been considered on the merits in a previous decision. S.T. Research Corp., B-232751.2, B-232751.3, Feb. 24, 1989, 89-1 CPD ¶ 202. In this regard, we note that the correction of mistakes in bids after bid opening is specifically permitted by section 14.406 of the Federal Acquisition Regulation. We therefore will not consider this protest on the merits under our significant issue exception.


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Associate General Counsel